

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WIRTGEN AMERICA, INC.,

Plaintiff/Counterclaim-Defendant,

v.

CATERPILLAR INC.,

Defendant/Counterclaim-Plaintiff.

C.A. No. 17-770-JDW

**WIRTGEN AMERICA, INC.’S MOTION TO STRIKE
CATERPILLAR INC.’S UNTIMELY NEW EXPERT OPINIONS**

Wirtgen America, Inc. (“Wirtgen”) respectfully moves to strike Caterpillar Inc.’s (“Caterpillar”) two new expert declarations attached to Caterpillar’s Motion Regarding Estoppel Defenses (D.I. 364) purporting to provide new expert opinions on issues that were never raised before in this case: D.I. 368 (Declaration of Richard W. Klopp) and D.I. 367 (Declaration of Andrew W. Smith). The opinions presented in these declarations were never disclosed in Caterpillar’s responses to interrogatories, not included in these experts’ reports, and not mentioned in the pretrial order. These new expert opinions are untimely and procedurally improper under Federal Rule of Civil Procedure 37(c)(1).

Accordingly, Wirtgen moves the Court to strike them pursuant to *Meyers v. Pennypack Woods Home Ownership Ass’n*, 559 F.2d 894, 904–05 (3d Cir. 1977) for the reasons set forth in Wirtgen’s Brief in Opposition to Caterpillar’s Motion Regarding Equitable Defenses and Wirtgen’s Cross Motion to Strike.

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Of Counsel:

Ryan D. Levy
Seth R. Ogden
William E. Sekyi
Mark A. Kilgore
PATTERSON INTELLECTUAL PROPERTY LAW, P.C.
Roundabout Plaza
1600 Division Street, Suite 500
Nashville, Tennessee 37203
(615) 242-2400
rdl@iplawgroup.com
sro@iplawgroup.com
wes@iplawgroup.com
mak@iplawgroup.com

YOUNG CONAWAY STARGATT & TAYLOR,
LLP

/s/ Adam W. Poff
Adam W. Poff (No. 3990)
Samantha G. Wilson (No. 5816)
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6600
apoff@ycst.com
swilson@ycst.com

- and -

Daniel E. Yonan
Paul A. Ainsworth
R. Wilson Powers III
Kyle E. Conklin
Deirdre M. Wells
Joseph H. Kim
STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1101 K Street NW, 10th Floor
Washington, DC 20005
(202) 371-2600
dyanan@sternekessler.com
painsworth@sternekessler.com
tpowers@sternekessler.com
kconklin@sternekessler.com
dwells@sternekessler.com
josephk@sternekessler.com

Attorneys for Wirtgen America, Inc.